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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., ETC., APPELLANTS

v.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY, AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, DEFENDANTS AND APPELLEES

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of the State of Michigan (R. 121–134) is reported sub nom. *International Union, etc.* v. *McNally,* in 325 Mich. 250, 38 N. W. 2d 421. The opinion of Judge Richter in the Circuit Court, Wayne County is attached to appellants' Statement as to Jurisdiction.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257 (2) of Title 28, U. S. C. On December 12, 1949, this Court entered an order noting probable jurisdiction.

QUESTION PRESENTED

The Board's interest in this case is limited to the single question, whether the provisions of the National Labor Relations Act preclude Michigan from prohibiting the calling of strikes incident to lawful collective bargaining demands unless a prescribed procedure for mediation is followed, and unless a majority of the employees in a State defined bargaining unit authorize such strike in a State conducted secret ballot election.

STATUTES INVOLVED

The pertinent provisions of the Bonine-Tripp Act, Act No. 318, Public Acts of Michigan, 1947, Michigan Stats. Ann. 1947 Cum. Supp. § 17.454 (1) *et. seq.*, Comp. Laws, 1948, § 423.1 *et seq.*; of the National Labor Relations Act (49 Stat. 449, 29 U. S. S. 151, *et seq.*); and of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141 *et seq.*), are set forth in the Appendix, *infra*, pp. 61–76.

STATEMENT

On July 30, 1942, the National Labor Relations Board found that the production and maintenance

employees of the Chrysler Corporation, hereinafter called the Company, employed at fourteen plants, ten of which are located in Michigan, three in Indiana and one in California, constituted an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (b) of the National Act and certified International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C. I. O., hereinafter called the Union, as the exclusive bargaining representative of the employees in that unit.[1] From time to time thereafter the Union and the Company entered into collective bargaining agreements covering the employees in this unit (R. 14, 80–81, 85). The contract involved in the case at bar was entered into on April 26, 1947, and was terminable at the option of either party on April 26, 1948 (R. 14, 80, 115–116). In February 1948, a dispute arose between the Union and the Company concerning

[1] *Chrysler Corp.*, 42 NLRB 1145. The pamphlet containing the contract which was introduced in evidence in this case, in listing the history of contract relationships between the Company and the Union, mentions a certification of the Board issued in the "fall of 1939" (R. 14, 80–81). On November 16, 1939, the Board found a unit composed of twelve plants, ten located in Michigan, one in Indiana, and one in California, appropriate. *Chrysler Corp.*, 17 NLRB 737. It was not until July 30, 1942, that the Board found appropriate and certified the Union as the representative of the fourteen plants listed in the contract introduced in evidence. Compare the list of plants set out at R. 85 with the list set forth by the Board in 42 NLRB 1145, 1150.

amendment of the wage provisions of the contract, and during that month the Union, pursuant to Section 8 (d) of the National Act, gave notice to the Company of its intention to terminate the contract unless agreement was reached concerning the wage issue in dispute (R. 8–9).

On March 11, 1948, again pursuant to the provisions of Section 8 (d) of the Labor Management Relations Act of 1947, the Union notified the Federal Mediation and Conciliation Service and the Michigan State Labor Mediation Board, of its intention to strike to enforce its wage demand (R. 9–10, 21–22). On May 11, 1948, after efforts at mediation and conciliation had been exhausted (R. 15–16, 18–19), the Union received a telegram from Philip Weiss, Chairman of the Michigan State Labor Mediation Board advising that (R. 10–11, 31–32), "any work stoppage of Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended." Believing that the attempted application of the Michigan Act was unconstitutional, the Executive Board of the Union disregarded this communication and called a strike which was put into effect on May 12, 1948 (R. 33–34, 11, 12–14, 15–16, 23; 24–26, 27, 28–29, 33–34, 38–39). Appellants thereby, as the court below held (R. 121–122), subjected themselves to criminal prosecution under Section 22 of the Michigan Act.

On May 29, 1948, appellants filed an amended and supplemental bill of complaint in the circuit court, Wayne County, alleging, *inter alia,* that Section 9, 9a and 9b of the Michigan Act were unconstitutional by virtue of conflict with the Labor Management Relations Act of 1947, and requesting that the defendants, prosecuting attorney of Wayne County and Attorney General of the State of Michigan, respectively, be enjoined from prosecuting them for violation of the Michigan Act (R. 39–45). Thereafter, on August 3, 1948, the Circuit Court of Wayne County entered its opinion (R. 66–69), and on August 11, 1948, entered its decree (R. 70–71), perpetually enjoining the defendants from prosecuting the appellants for any alleged violations of the challenged provisions of the State Act. The court held that the provisions of the Michigan Act requiring a strike vote and penalizing the calling or instigating of strikes while an election is pending were unconstitutional because they contravened the due process clauses of the State and Federal Constitutions and conflicted with the Labor Management Relations Act (R. 69).

On June 29, 1949, the Supreme Court of Michigan entered its opinion (R. 121–134), and decree (R. 135), reversing the judgment of the Circuit Court and dismissing the bill of complaint. The court held, *inter alia,* that prosecution of appellants for violation of the challenged provisions of the Michigan Act would not conflict

with the Labor Management Relations Act of 1947.

SUMMARY OF ARGUMENT

I

A. The Michigan regulations as here applied differ substantially from the Federal scheme for the promotion of collective bargaining. Under the Federal Act a party desiring to modify or terminate a collective agreement must so notify the employer sixty days and Federal and State mediation services thirty days prior to the expiration of the contract, must bargain collectively over the proposed modifications and must, during the sixty-day period, continue in effect without strike or lockout the terms of the existing agreement. The Michigan Act provides that, when it appears that the parties are unable to settle a dispute, notice of intention to strike or lockout must be served upon the other party and upon the State Mediation Board "not less than 10 days" before the strike is to become effective; the State Board is then authorized to mediate the dispute; when and if notified by either party that further efforts to settle the dispute by mediation would be without avail, the State Board is obliged within ten or twenty days to conduct an election among the employees in a bargaining unit which the State Board finds will "best secure to the employees their right to collective bargaining"; no strike may lawfully take

place thereafter unless in the election a majority of the employees vote to authorize a strike.

The strike in the instant case, which occurred incident to the Union's demand for modification of a collective agreement, was subject to the notice, waiting period and collective bargaining requirements of the Federal Act; the Union fully complied with all such requirements and was therefore free to strike when it did if Federal law is controlling.

To comply with the State law, the Union would have had to postpone the strike beyond the date when the period fixed by Federal law to provide "proper opportunity for mediation" ended. It would have been free to strike only if, in an election conducted by the State Board, a majority of the employees in the State defined unit voted in favor of the strike..

B. The Michigan statute is thus incompatible with the scheme of the Federal statute for the promotion of collective bargaining. At the time it enacted the Taft-Hartley Act Congress considered and rejected proposed limitations upon strikes in support of lawful collective bargaining demands which were virtually identical with the Michigan restrictions. Congress deliberately refused to condition the right to strike in support of legitimate collective bargaining demands upon affirmative vote of the employees in the appropriate unit. Congress provided such period for mediation in strike situations like this one as it

deemed proper. To permit the States to condition the right to strike upon affirmative vote of a majority of the employees, or to prolong the period for mediation, would permit the States to override the judgment of Congress as to how collective bargaining in industries covered by the Federal Act should be regulated.

The Congress which enacted the Taft-Hartley Act was aware that preservation of the right to strike is indispensable to the system of free collective bargaining. Senator Taft, commenting on the underlying philosophy of the Taft-Hartley Act, noted on the floor of the Senate that the Act was based upon the premise "that there is a right to strike and that labor peace must be based on free collective bargaining." He explained that for this reason the Committee rejected modifications of the right to strike in cases which involve "basic" questions of "wages, hours, and working conditions."

When the notice and waiting period requirements of the amended Act are fulfilled, employees who strike for higher wages are protected by Section 7 of the Act which guarantees to employees the right to engage in "concerted activities for the purpose of collective bargaining," and their status as "employees" is preserved by Section 2 (3). These provisions were carried over from the Wagner Act. Under the Wagner Act it was clear that if an employer attempted to interfere with a lawful strike in support of legiti-

mate demands either by discharging or threatening to discharge the strikers or by attempting to conduct a poll among them to ascertain how many were in favor of a strike the employer was guilty of an unfair labor practice. This Court, construing the Wagner Act, had also held that a State may not interfere with the federally protected process of collective bargaining in a manner prohibited to employers. *Hill* v. *Florida*, 325 U. S. 538. In *N. L. R. B.* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), certiorari denied, 332 U. S. 762, it was held that a State could not, compatibly with the Federal Act, condition the right to strike in interstate industries upon compliance with a State imposed cooling off period.

The Michigan Act would punish employees for exercising a right preservation of which Congress deems essential to effectuation of Federal policy. Michigan would upset the balance of bargaining power established by Congress by allowing employers in that state to gamble that the union will lose the state conducted strike vote. Michigan would punish by criminal sanctions and restrain by injunction the very conduct which Congress declared could not serve as a basis for terminating the strikers' status as employees. In these respects there is clear conflict between the Michigan Act and the Federal Act.

C. The notice, waiting period and strike vote provisions of the State Act operate in a field preempted by the National Act. In the Taft-

Hartley Act, Congress regulated fully the subject matter of collective bargaining and imposed such conditions precedent to strikes in support of lawful demands as it deemed proper. Congress imposed notice and waiting period limitations where it deemed such limitations desirable. Congress also made use of strike votes to the extent it deemed this technique of regulation meritorious. Congress intended that its regulation of the field of collective bargaining in interstate industry should be exclusive.

The State regulations, which, in part, duplicate the functions of the National Act, and, in part, go further than Congress saw fit to go, operate in an area which Congress deliberately foreclosed to the States.

II

Application of the Michigan Statute is incompatible with Federal policy with respect to determination of bargaining units by the National Board. The National Act contemplates that all employees in the federally established bargaining unit shall be free to act together and simultaneously in collective bargaining and related activities, including strikes, to obtain improved wages, hours, and working conditions. The federally established unit in this case includes employees in Indiana and California, as well as Michigan. Since the State Act can have only State-wide effect, its restrictions prevent the Michigan em-

ployees from acting in concert with the out-of-State employees in support of their uniform, lawful economic demands. To permit all the States to impose requirements of this character would be to subject the employees in a single bargaining unit to numerous diverse and conflicting requirements. State by State administration of strike vote requirements fragmentizes bargaining units found appropriate by the National Board and results in conflict between State and National Board findings concerning the appropriate bargaining unit.

III

Since the matters which the State has here attempted to regulate are subject to regulation by the National Board, and since the strike here involved, having met the procedural requisites of the Federal Act, was lawful and protected by that Act, the holding of this Court in *U. A. W.* v. *Wisconsin Employment Relations Board,* 336 U. S. 245, does not support the exercise of jurisdiction by the State.

ARGUMENT

THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, PRECLUDES MICHIGAN FROM APPLYING ITS STRIKE VOTE STATUTE TO THE STRIKE HERE INVOLVED

A. THE PRACTICAL DIFFERENCES BETWEEN THE NATIONAL ACT AND THE MICHIGAN STATUTORY SCHEME

Section 8 (d) of the National Labor Relations Act, as amended, defines in detail the "duty to

bargain collectively" which is imposed upon both employers and labor organizations by the National Act. Section 8 (d) provides, *inter alia*, that "where there is in effect a collective bargaining contract covering employees in an industry affecting commerce," a party desiring to terminate or modify such agreement must notify the other party sixty days prior to the expiration date or, in the absence of an expiration date, sixty days prior to the time it is proposed to make such termination or modification; must notify both the Federal and State conciliation agencies within thirty days after the initial notice; and must continue in effect, without strike or lock-out, the terms of the existing agreement for sixty days following the original notice or until the contract expires.

At the time the Union put into effect a strike at the Company's plants on May 12, 1948, all conditions precedent involving notice, bargaining and mediation required by the National Act had been met, and the strike was entirely lawful under Federal law. The National Labor Relations Board had determined that a unit composed of the employees at the Company's ten Michigan, three Indiana and one California plant was appropriate and had certified the Union as the exclusive bargaining representative of the employees in this unit. *Chrysler Corp.*, 42 NLRB 1145. The strike was called as a result of a dispute over wages between the Company and the Union arising during the negotiation of

modifications of a contract entered into on April 26, 1947, and covering the unit found appropriate by the National Board (R. 14, 81). This contract was terminable at the option of either party on April 26, 1948 (R. 14, 115–116). About the middle of February 1948, and sixty days prior to April 26, 1948, the Union gave the Company notice of its proposed modification of the wage provisions of the contract (R. 8).

On March 11, 1948, no agreement respecting wages having been reached, the Union notified the Federal Mediation and Conciliation Service and the Michigan State Labor Mediation Board of the existence of the dispute (R. 8, 21–22). Thereafter the Union and the Company continued in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract until both its expiration date and the lapse of sixty days after the first notice had occurred (R. 15–16). During this period and for two weeks thereafter the Union and the Company, with the assistance of both Federal and State mediators and conciliators, bargained collectively with respect to the wage dispute (R. 11–12, 15–16). On May 11, 1948, the efforts at mediation and conciliation had been exhausted and the negotiations between the Company and the Union reached an impasse (R. 12–13, 17–18, 33).

Having complied with all the requirements of the National Act, the Union was on May 11, 1948,

free to strike in support of the employees' wage demands, if Federal law was controlling. The strikers would retain their status as employees (Section 2 (3)), and would be protected against unfair labor practices. Had the Company discharged any employee for so striking it would have been guilty of an unfair labor practice under Section 8 (a) (3) of the National Act, as amended. Had the Company in any other manner interfered with, restrained or coerced its employees in the exercise of their right to strike (Section 7) it would have been guilty of an unfair labor practice under Section 8 (a) (1) of the National Act, as amended.[2] Indeed, if the Company had attempted to conduct a strike vote of its own among the em-

[2] *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344–348 (refusal to reinstate leaders of an economic strike); *National Labor Relations Board* v. *Remington Rand, Inc.*, 130 F. 2d 919, 928 (C. A. 2) ("Respondent, by its immediate discharge of the strikers and attempted abnegation of the employment relationship, was guilty of an unfair labor practice"); *Firth Carpet Co.* v. *National Labor Relations Board*, 129 F. 2d 633, 635 (C. A. 2) (refusal to reinstate employees because they engaged in a strike); *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works*, 165 F. 2d 660, 663 (C. A. 2) (discharge of employees for striking); *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. 2d 167, 176 (C. A. 3) ("respondent attempted to terminate the employee status of its striking employees simply because they went on strike"); *Home Beneficial Life Ins. Co.* v. *National Labor Relations Board*, 159 F. 2d 280, 285 (C. A. 4), certiorari denied, 332 U. S. 758 ("an employer who denies further employment to employees merely because they have taken part in a strike performs an unlawful act"); *National Labor Relations Board* v. *Good Coal Co.*,

ployees, after the Union had notified the Company that it proposed to strike, this action by the Company would have been held to be an unfair labor practice. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 865, 870 (C. A. 2), certiorari denied, 304 U. S. 576. In the *Remington Rand* case, after the Union had conducted a strike vote among its members and announced that it proposed to strike, the Company attempted to conduct a strike vote of its own. The court held not only that by attempting to conduct the vote the company violated Section 8 (1) of the Act, but that the employees were

110 F. 2d 501, 502, 503 (C. A. 6), certiorari denied, 310 U. S. 630 (discharge for striking); *Carter Carburetor Corp.* v. *National Labor Relations Board*, 140 F. 2d 714, 717–718 (C. A. 8), (discharge for striking); *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. 2d 874, 886–887 (C. A. 1), certiorari denied, 313 U. S. 595 (employer's effort to defeat strike by offering individual contracts to strikers and attempting to discredit union and refusing to bargain); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. 2d 780, 790–791 (C. A. 9) (employer's attempt "to influence public opinion and break down the morale of the strikers," coupled with acts of intimidation and violence to break up picket line and defeat strike); *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board*, 119 F. 2d 903, 910 (C. A. 8) (company instigation of violence against strikers); *National Labor Relations Board* v. *Moltrup Steel Products Co.*, 121 F. 2d 612, 616 (C. A. 3) (formation of company union as part of back-to-work movement); *Birmingham Post Co.* v. *National Labor Relations Board*, 140 F. 2d 638 (C. A. 5) (supervisors "active in endeavoring to break the strike"); *National Labor Relations Board* v. *Lettie Lee, Inc.*, 140 F. 2d 243 (C. A. 9) (direct appeal to strikers individually to return to work); *National Labor Relations Board* v. *Mont-*

within the scope of the Act's protection when they interfered with the holding of the company conducted election, and that the company further violated Section 8 (3) of the Act when it discharged the employees for so interfering with the conduct of the election. Speaking through Judge Larned Hand, the court said:

> * * * it is plain, we think, that after an exclusive bargaining unit [agent] has taken a strike vote, it is an active interference with the exercise of its right to "bargain collectively" for the employer to undercut its authority by a vote of his own. The only possible reason for doing this is to show that the union's vote does not truly represent the men's wishes; it is to go over the heads of the representatives to their constituents; to discredit them as representatives, to destroy their power to bargain as such. The members of the Joint

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gomery Ward & Co., 133 F. 2d 676, 680–682 (C. A. 9) (employer contacted individual employees in effort to induce them to abandon strike. "This attempt to deal individually with the employees at a time when a strike was in progress, apparently the result of unproductive efforts in collective bargaining, is within the prohibition of Section 8 (1) of the Act;" quoting with approval the language of the Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Remington Rand, Inc.*, set forth in text above); *National Labor Relations Board* v. *Rock Hill Printing & Finishing Co.*, 131 F. 2d 171 (C. A. 4) (employees induced not to join strike by promise of increased wages and five year individual employment contracts); *Valley Mould & Iron Corp.* v. *National Labor Relations Board*, 116 F. 2d 760, 762 (C. A. 7), certiorari denied, 313 U. S. 590 (employer threatened not to reemploy strikers who did not abandon strike).

> Board were therefore, within their rights when they sought without violence to prevent this vote from being taken, and the respondent in selecting them for discipline because they did so, was discriminating against them under Section 8 (3) * * *.

On May 11, 1948, after it became known that a strike was imminent, the Union received a telegram from the chairman of the Michigan State Labor Mediation Board advising that "any work stoppage at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended" (R. 11–12, 39–40). The Michigan statute cited in the telegram, if applicable to the strike here involved, does, as the telegram advises, make the strike illegal. By its terms it would apply to the strike here involved and would subject any person, who individually, or as one of a group, instigated, called or caused the strike, to a fine of not more than $1,000 or to imprisonment in the county jail for not more than six months or to both such fine and imprisonment. Section 22. Moreover, the strike could have been enjoined by a state court at the instance of the Michigan State Labor Mediation Board or the Company. Section 22a. In order to have met the requirements of the Michigan Act for a legal strike the Union would have had to postpone the strike, participate in a State proceeding to determine the bargaining

unit, participate in a State-conducted election in such bargaining unit, and secure the authorization of the strike by a majority of the employees in such unit.

Section 9 of the Michigan Act provides that "no strike or lockout shall take place" unless its requirements are met. These requirements are that the "employees or their representative" in the case of any impending strike shall serve both the Michigan State Labor Mediation Board and the employer with notice of the dispute together with a statement of the issues involved "not less than 10 days" before the strike is to become effective. This notice may not be given until it appears that "the parties thereto are unable to settle any dispute." Section 9 (1). Upon receipt of such notice the State Board is authorized to mediate the dispute. Section 9a provides that when it appears to either party that "further efforts to settle [the dispute by mediation] would be without avail" such party is authorized to so notify the Board. The State Board is then obliged to "determine such a bargaining unit as will best secure to the employees their right of collective bargaining" (Section 9e) and to conduct an election among the employees in such unit, if practical, within ten days after the receipt of such notification, otherwise within twenty days. Section 9a. The State Act provides that "It shall be the duty of both employees and employer to avoid a cessation of employment * * * dur-

ing the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a." Section 9b.

In order to comply with the Michigan Act the Union would have to postpone the strike beyond the date when it first became permissible under Federal law. This occurs because the notice requirements of the State law begin to run only from the time the parties reach an impasse, whereas under Section 8 (d) of the Federal Act the time when notice must be given is not fixed by reference to the inability of the parties to settle a labor dispute, but rather by reference to the expiration date of contracts or the date on which a proposed termination or modification of a contract is to be put into effect. Thus, in the instant case, in the middle of February 1948 (R. 8), more than sixty days before April 26, 1948, the termination date of the contract (R. 14, 115–116), the Union gave the notice of proposed modification of wage provisions and on March 11, 1948 (R. 9, 21–22), more than thirty days prior to the termination date, gave notice to the Federal and State mediation services. Having bargained in good faith, availed itself of the Federal and State mediation services, and continued in effect the contract without strike until its termination date, April 26, 1948, the Union was free to strike on April 27, 1948 if the Federal law governed. But under State law, only when the parties on May 11, 1948 exhausted their

ability to settle the dispute without a strike, did the State notice and waiting periods first become applicable. At the very time the waiting period established by Congress to provide "proper opportunity for mediation" ended, leaving the parties free to strike or lockout, the provision of State law, if valid, intervened and required at least postponement of such action for an additional ten or twenty days and perhaps even abandonment if a majority of the employees in the Michigan determined unit did not vote to authorize it. Whereas under Federal law the Union was free to strike on April 27, 1948, or any time thereafter, and did strike on May 12, 1948, if it had complied with State law the strike would have had to be postponed until such time as the Michigan Board during the ensuing twenty days conducted an election and determined that a majority of the employees in such unit as the Michigan Board should establish authorized the strike.[3]

The Michigan Act provides that "if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for col-

[3] The exact number of days of postponement which would result is impossible to determine. The Michigan State contemplates a first ten day notice when the parties are unable to settle their dispute, a second notice after ensuing mediation efforts fail and an election within ten days after the second notice if practical, otherwise within twenty days after the second notice. Sections 9 (1) and 9a of the Michigan Act.

lective bargaining, the board shall adopt such unit." Section 9e. In the instant case the National Board had determined the appropriate unit for the employees involved in the dispute. It was composed of fourteen of the Company's plants, ten located in Michigan, three in Indiana and one in California. *Chrysler Corp.*, 42 NLRB 1145. This was the unit covered by the contract which the Union and the Company were negotiating (R. 14, 81, 85). Obviously, the Michigan Board could not conduct an election among the employees in four of the plants in the unit, to wit, the three plants in Indiana and the one in California. The record is silent as to what unit or units the Michigan Board would utilize for conducting the elections in a situation such as this. Whether the Michigan Board would treat the unit as all the employees in Michigan who are within the unit fixed by the National Board, or each of the plants which are located in Michigan, or some other unit, is conjectural. It is clear, however, that because of the interstate character of the unit here involved the Michigan Board would be powerless to conduct a poll of all of the employees in the unit covered by the contract to determine whether a majority wish to strike. If the Union had submitted to the election requirements of the Michigan Act it would have been acquiescing in having the right to strike of its members within the multi-state unit conditioned on determination by the Mich-

igan Board of the wishes of those portions of the unit located in Michigan.

B. THE MICHIGAN ACT IS INCONSISTENT WITH THE SCHEME ADOPTED BY CONGRESS WITH RELATION TO COLLECTIVE BARGAINING AND STRIKES

1. *The Michigan statute interferes with the right to strike in circumstances where Congress considered freedom to strike indispensable to free collective bargaining*

The Federal policy of encouraging collective bargaining rests upon coordinate premises that the way to prevent strikes is not by making them illegal when they are utilized for securing legitimate bargaining demands, but by rendering resort to strikes less frequent because both parties at the bargaining conference know the demands put forth can be backed by legal resort to economic sanctions. For genuine collective bargaining depends upon two parties each having some real power with which to support its bargaining position. The Taft-Hartley Act expressly permits a strike for better wages, hours or other conditions of employment at the end of a contract period when, during the sixty days prior to the contract's termination, the Union has observed the contract, bargained collectively over proposed modifications, and given the proper notices to the employer, and Federal and State mediation services. Senator Taft, during the debates which preceded enactment of the amended Act, pointed out that the right to strike over wages, hours, and

working conditions was essential to our system of society.[4] He stated (93 Cong. Rec. 3835):

> Basically, I believe that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon that proposition. That means that we recognize freedom to strike when the question involved is the improvement of wages, hours, and working conditions, when a contract has expired and neither side is bound by a contract * * *.
>
> We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, hours, and working conditions. But if we impose compulsory arbitration, or if we give the Government power to fix wages at which men must work for another year or for two years to come, I do not see how in the end we can escape a collective economy. * * *
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> * * * * *
>
> If we begin with public utilities, it will

[4] Ira Mosher, Chairman of the Executive Committee of the National Association of Manufacturers, testified to the same effect in the Hearings before the Senate Committee on Labor and Public Welfare on S. 1126, 80th Cong., 1st Sess., pp. 940, 950. He said: "we have to preserve the right to strike if we are going to have good faith collective bargaining over wages, hours, and working conditions * * *. If a legitimate difference of opinion over wages, hours, or working conditions cannot be reconciled through collective bargaining or mediation employees should be free to strike when such strike is not in violation of an existing agreement."

be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation.

* * * * *

We did not feel that we should put into the law, as a part of the collective-bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure, or to any other action. We feel that it would interfere with the whole process of collective bargaining. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and it will back out of collective bargaining.

Studies of collective bargaining uniformly point out that the right to strike is in an indispensable prerequisite to the process.[5] A committee of

[5] John B. Clark, *The Theory of Collective Bargaining*, American Economic Ass'n. Quar., April 1909, pp. 26, 28; E. E. Cummins, *The Labor Problem in the United States*, 1935 (2nd ed.), pp. 251, 339; John A. Fitch, "*Strikes and Lockouts*," Encyclopedia of the Social Sciences, 1934, Vol. XIV, p. 420 ff.; E. T. Hiller, *The Strike*, 1928, p. 206; David A. McCake and Richard A. Lester, *Labor and Social Organ-*

prominent industrialists, labor leaders and government officials recently stated:[6]

> Those processes [the processes of collective bargaining] lose all color of reality if the workers have not the right to reject management's offer and quit, or if management has not the right to refuse the workers' terms and close the plant. It is the overhanging pressure of this right to strike or lockout that keeps the parties at the bargaining table and fixes the boundaries of stubbornness in the bargaining conferences. It sets the limit upon the aggressive and emotional conduct of the negotiations and dominates the situation in the final moments of responsible decision. Unless the negotiating parties are faced with this possibility of a strike or a lockout, and are forced to examine and accept the consequences of their own decision, they are free from the responsibility that makes genuine collective bargaining possible and produces through it creative results.

The statement by Senator Taft, quoted above (*supra*, p. 23–24), makes it clear that the Congress which enacted the amended Act believed that any "modification" of the right to strike for im-

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ization, 1938, pp. 107–108; Malcolm, Keir, *Labor's Search for More*, 1937, p. 18; National Labor Relations Board, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (Gov't. Print. Off., 1940), pp. 8, 10–11.

[6] The Twentieth Century Fund, Labor Committee, Strikes and Democratic Government (1947), pp. 13–14.

proved wages, hours or working conditions, when contracts were not in effect and "after proper opportunity for mediation," would impair the system of free collective bargaining which it was the policy of the Federal government to preserve and to foster.

(a) Congress rejected as undesirable proposed limitations on the right to strike which were identical with the Michigan limitations

One of the "modifications" of the right to strike which Congress considered and rejected was a strike vote provision such as is provided in the Michigan Act. The possibility of having the federal body utilize local agencies to conduct strike votes was suggested to Congress by the House Committee in the course of its discussion of a proposal for strike votes (H. Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess., p. 22). The House bill did not include such a provision, but instead H. R. 3020, as it passed the House, contained in its definition of collective bargaining, provisions which declared *inter alia* (Section 2 (11) (B) (VI)), that if a dispute arose when no collective bargaining contract was in effect, the collective bargaining representative, before "authorizing, conducting, or participating" in any strike in connection with the dispute, must notify the Administrator[7] of its desire to have a strike vote

[7] The position of Administrator, contemplated in H. R. 3020, emerged in the final Act as the office of General Counsel, Section 3 (d) of the Act, as amended.

conducted. The Administrator was directed "within a reasonable time thereafter" to "provide for a secret ballot of the employees in the bargaining unit concerned on the question whether such employees desire to reject the employer's last offer of settlement and to strike." Subsection (h) of Section 2 (11) (B) (VI), provided that "a * * * strike may not be authorized or conducted unless in such secret ballot a majority of the employees in the bargaining unit concerned vote to reject the employer's last offer of settlement, and to strike." Violation of this obligation by a labor organization was defined as an unfair labor practice by Section 8 (b) (2). In addition, Section 8 (c) (8), declared it to be an unfair labor practice to "direct or call a strike or make any request to the Administrator under section 2 (11) for a strike ballot, unless at least a majority of those voting on the question have * * * authorized such action."

At the hearings before the Senate Committee witnesses repeatedly urged that similar provisions be included in the Senate bill (See, *e. g.*, Hearings before the Senate Committee on Labor and Public Welfare, 80th Cong., 1st Sess.; Governor Stassen, pp. 562–565, 567, 570, 574–575, 577–578, 586; Charles Kuzzell, pp. 673–678; T. G. Graham, pp. 879, 887; Ira Mosher, pp. 940–942). Among the justifications offered for the proposal was the fact that, "Presently strike votes are conducted by

the union and only union members are permitted to vote, although the issues involved and the results of the strike vote affect all members of the bargaining unit in the same degree" (Hearings, *op. cit. supra,* Graham, p. 879; see also, Kuzzell, pp. 675–676, Mosher, p. 940; vf. H. Rep. No. 245 on H. R. 3020, p. 22). The witnesses, for this reason, recommended that after an impasse is reached in collective bargaining negotiations an election be conducted under governmental auspices on the question whether the employees desired to accept the employer's final offer, and that only if a majority of the employees in the bargaining unit voted to reject the offer could a strike lawfully proceed.[8]

Members of the Senate Committee voiced disagreement with the proposal. Senator Ball, in a colloquy with Governor Stassen, pointed out (Hearings, *op. cit. supra,* p. 565): "That seems to me a very drastic restriction on the right of the union to strike. You are saying now a majority vote of the employees, not the union?

[8] Governor Stassen, one of the leading proponents of the plan, differed from other witnesses inasmuch as he proposed that the election be conducted by the Union, in the presence of employer and governmental observers. Hearings, *op. cit. supra,* p. 566. He also suggested that the proposal be enforced by "taking away * * * the right of the employees under the Wagner Act if they conduct an illegal strike, and by provision of misdemeanor penalties against those who order, promote and incite strikes." In response to Senator Ball's question: "You would not permit the employer to get a injunction?", Governor Stassen replied, "By no means." Hearings, *op. cit. supra,* p. 565, see also 580–583.

Governor STASSEN. That is right.

Senator BALL. That means if the union has 55 percent they have practically got to get a unanimous vote in order to go on strike. * * * It seems to me that except in the case where the union has a closed shop, a closed union shop, that is an extremely drastic restriction of the right to strike.

Governor STASSEN. It would be a drastic provision, Senator, if your provision as to a closed union shop were adopted, but I am approaching it on a different basis * * *.

Later, in a colloquy with Mr. Mosher, Senator Ball reiterated these views (*ibid.*, pp. 940–941), and added (p. 941):

It seems to me if you eliminate the closed shop and industry wide bargaining, that you should leave the union free. You put a sufficient check on arbitrary leadership's decisions without any reference to what the rank and file thinks, if you get rid of secondary boycotts and the closed shop. I do not like to have the Government go in and supervise elections and all that business. It seems to me it is headed in the direction of intervention. You eliminate the closed shop and leadership is going to be a little more careful about calling a strike unless they are pretty sure they have the men back of them.[9]

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[9] Compare H. Minority Report No. 245 on H. R. 3020, p. 70, in which the strike vote provision was objected to, *inter alia*, on the ground that its effect was "to interject the Federal Government still further into the bargaining process."

Senator Thomas suggested that the proposal amounted to an attempt to give representation to the minority in a bargaining unit, and noted that to adopt it would undercut the principle of majority rule (Hearings, *op. cit. supra,* pp. 675–676). Senator Morse, referring to his experience with the National War Labor Board, indicated that a provision for compulsory strike votes after an impasse had been reached in bargaining might tend to destroy collective bargaining, since it would give the employer an incentive to refrain from making concessions in the hope that the employees might ultimately vote to refrain from striking. He said (*ibid.,* p. 677):

> * * * we have to watch out when drafting labor legislation that we do not lay out some very nice looking procedure and overlook the fact that it is the procedure in the last step that is usually going to be controlling. They are going to see what the chances are along the line. * * * We had thousands, and I mean thousands, of cases in which there was no attempt to settle the dispute between the parties. Why? Well, because you could always go up to the War Labor Board and take your chances there.
>
> So I look somewhat askance at a procedure that encourages them to hold off and hold off with the thought that "maybe we will get something from the last resort."

Senator Pepper indicated that it would be inequitable to require the employees to vote on the

employer's last offer as a condition to striking when the stockholders of the corporation were not being afforded an opportunity to vote on whether to accept the union's offer rather than face a strike (*ibid.*, pp. 586–587).

The bill reported by the Senate Committee (S. 1126), contained a definition of collective bargaining in Section 8 (d) which did not include the suggested provision for strike votes. Section 8 (d), as reported by the Committee, passed the Senate and its provisions, rather than those of the House Bill, were accepted by the Conference Committee (H. Conf. Rep. No. 510, on H. R. 3020, pp. 34–35), and ultimately enacted into law.

Rejection by Congress of the proposal that Section 8 (d) be expanded to comprehend the obligations here imposed by State law, and its adoption of notice and waiting period requirements only in the limited class of disputes to which Section 8 (d) refers, establish that Congress considered supplementary restraints of that character upon the collective bargaining process neither desirable nor necessary. This inference is strengthened by the fact that in the Labor Management Relations Act, Sections 203 (c), 206–210, Congress also made use of the strike vote device for other types of cases. Compulsory use of strike votes was restricted to situations in which strikes would imperil the National health, safety and welfare. Even there the right to strike was nc conditioned upon securing majority approval in the election. (Sections 206–210.) Strike ballots

on the employer's last offer of settlement were also referred to in Section 203 (c) as a possible technique which might be utilized by the Federal Mediation and Conciliation Director. However, even this Section states in terms that: "The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act." This provision indicates Congress' concern lest the collective bargaining process be affected, in other than emergency situations, by compulsory provision for strike votes. Such careful selection by Congress of the situations and circumstances in which the techniques of regulation embodied in the Michigan Act should apply, when considered together with the foregoing legislative history concerning rejection of proposed modifications of the right to strike, show that Congress did not believe that the right to strike in national industries should be limited by the kind of regulation which Michigan has imposed.[10]

(b) Congress intended that upon compliance with the notice and waiting period limitations of Federal law employees should be free to strike

The legislative history also indicates, as does the amended Act on its face, that Congress intended that upon compliance with the notice and

[10] Senator Taft also pointed out (93 Cong. Rec. 6445–6446) that "the conferees rejected the broad prohibition of all kinds of strikes. * * * The only strikes which are declared to be illegal are secondary boycotts and jurisdictional strikes."

waiting period requirements of Section 8 (d), labor organizations should be free to strike in support of lawful collective bargaining demands. The Michigan Act, by imposing additional limitations and restrictions upon the freedom to strike after compliance by a labor organization with the provisions of Section 8 (d), defeats the intention of Congress and is clearly inconsistent with Federal policy.

Moreover, the strike vote provisions aside, the notice and waiting period limitations of the Michigan Act, as applied to strikes arising over disputes concerning modification or termination of collective agreements, are inconsistent with the notice and waiting provisions of Section 8 (d). (See pp. 19–20, *supra*.) The State Act may serve to prolong beyond the period which Congress deemed "proper" (see statement of Senator Taft, p. 24, *supra*), the time during which strikes arising over contract disputes may not occur.

The Taft-Hartley Act, with its specific provisions respecting strikes, is even clearer than was the Wagner Act that Congress intended that strikes such as the one here involved should be conducted without governmental interference. But even under the Wagner Act both by reason of its statutory provisions and by reason of Board and court decisions, it was well settled that the right to strike was not impaired, but, on the contrary, to a considerable extent, protected. Section 7 of the Wagner Act affirmatively declared

that "employees shall have" certain rights. These were the rights "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." Section 8 (1) of that Act protected the exercise of these employee rights against interference and coercion by employers.[11] Section 2 (3) of the Wagner Act specifically assured to strikers that their status as employees would not be impaired. It provided that the term "employee" shall "include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute * * *, and who has not obtained any other regular and substantially equivalent employment."[12] Section 13 of the Wagner Act provided "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike." Section 13, in the words of the Senate Labor Committee, was intended to constitute "an affirmative declaration of the right to strike."[13]

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[11] Section 8 (b) (1) of the Act, as amended, also protects the exercise of the rights guaranteed in Section 7 against restraint or coercion by labor organizations.

[12] The Taft-Hartley Act made no change in Section 2 (3) insofar as it applies to strikers. Section 8 (d) of the amended Act removes employee status from individuals who strike in violation of that section.

[13] Senate Labor Committee, Memorandum dated March 11, 1935, Comparing S. 2926, 73d Cong., 2d Sess., with S. 1958,

The reason for so specifically protecting the rights of strikers, as the Senate Committee which reported on the bill which became the Wagner Act noted (S. Rep. No. 573, 74th Cong., 1st Sess., p. 6), was that "To hold otherwise for the purposes of this bill would be to withdraw the Government from the field at the very point where the process of collective bargaining has reached a critical stage."[14]

74th Cong., 1st Sess., reprinted in Legislative History of the National Labor Relations Act of 1935, Vol. I (Govt. Print. Off., 1949); p. 1371.

[14] The Ball bill, S. 360, 80th Cong., 1st Sess., proposed to remove the protection of strikers contained in Section 2 (3) of the Act. At the hearings before the Senate Committee on S. 1126, Charles R. Kuzell, representing the American Mining Congress, urged adoption of this provision as an amendment to the Wagner Act. He said, p. 693: "The National Labor Relations Act now provides that employees on strike continue to remain employees. This provision, coupled with the National Labor Relations Board's zeal to protect a strike from any interference by an employer, has cushioned the strike by making it almost certain to the employees that they will not lose their jobs if they strike. It is an unfair labor practice for an employer to be in any way connected with a back-to-work movement.

"S. 360 wisely provides that a striking employee loses his status as an employee if he has been replaced, or has refused an offer of reinstatement to substantially equivalent employment. Such a provision enables an employer to start up his plant and for the first time in many years be able to notify his employees that if they do not return by a certain date their employment will be terminated. The restoration of this right will again cause the union and the employees to weigh the risks of a strike as carefully as an employer must do."

The proposal was rejected and Section 2 (3) was continued in the amended Act without material change. Cf. H. Rep. No. 245 on H. R. 3020, p. 22.

The Congress which enacted the Wagner Act was conscious of the need for according recognition to the right to strike in the statute designed to establish and foster the system of collective bargaining. The Wagner Act succeeded Section 7 (a) of the N. I. R. A. (15 U. S. C. 701, *et seq.*), which also had guaranteed to employees the right to organize and bargain collectively through representatives of their own choosing. In a memorandum dated March 11, 1935,[15] comparing S. 2926, 73rd Cong., 2d Sess., with S. 1958, 74th Cong., 1st Sess., the Senate Labor Committee quoted with approval the following holding of the Court of Errors and Appeals of New Jersey in *Bayonne Textile Corp. v. American Federation of Silk Workers*, 116 N. J. Eq. 146, 172 At. 551, 554, construing the earlier Act:

> The right to organize and bargain collectively connotes the right to strike in event that such course is deemed advisable by the employees for their mutual aid or protection. The latter is an incident of, and imparts efficacy to, the former. It cannot be that Congress intended to reserve the right of collective action, in respect of wages, and to deprive the employees of the only weapon at their command to make its exercise effective—a lawful weapon devised

[15] The document is reprinted in Legislative History of the National Labor Relations Act of 1935, Vol. I (Govt. Print. Off., 1949), pp. 1319, 1344, 1346.

> to secure the enforcement of a fundamental right. A construction that would deny to the employees the privilege of striking, to enforce what they conceive to be a just demand for a wage increase, would emasculate and devitalize the clause conferring the right to organize and bargain collectively. The denial of this long-established fundamental right to strike would, in effect, compel acceptance of the scale of wages fixed by the employer.

Witnesses who testified in support of the bill (S. 2926, 73rd Cong., 2nd Sess.) which was the predecessor of the bill which became the Wagner Act, expressed the conviction that the bill "makes proper provisions for guaranteeing labor the right to strike, a right that labor cannot possibly give up under any conditions,"[16] and that "this bill explicitly safeguards this right [to strike]."[17]

Giving effect to the language of the Act and the legislative history, the Board and the courts have uniformly held that the right of employees to strike in aid of lawful collective bargaining demands was affirmatively recognized by the Wagner Act.[18] As this Court stated in *National Labor*

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[16] Testimony of Sidney Hillman on S. 2926, reprinted in *Legislative History, op. cit., supra*, note 15, p. 153.

[17] Testimony of Dr. Paul F. Brissenden on S. 2926, *op. cit. supra*, note 15, p. 246.

[18] *American Mfg. Co.*, 5 NLRB 443, enforced, 106 F. 2d 61, 67-68 (C. A. 2), affirmed, 309 U. S. 629; *Carter Carburetor Corp.* v. *National Labor Relations Board*, 140 F. 2d 714, 718

Relations Board v. *Fansteel Corp.*, 306 U. S. 240, 256:

> * * * Congress also recognized the right to strike,—that the employees could lawfully cease work at their own volition because of the failure of the employer to meet their demands. Section 13 provides that nothing in the Act "shall be construed so as to interfere with or impede or diminish in any way the right to strike." But this recognition of "the right to strike" plainly contemplates a lawful strike,—the exercise of the unquestioned right to quit work. As we said in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 347, "if men strike in connection with a current labor dispute their action is not to be construed as a renunciation of the employment relation and they remain employees for the remedial purposes specified in the Act."

In *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), en-

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(C. A. 8); *National Labor Relations Board* v. *Western Cartridge Co.*, 139 F. 2d 855, 858 (C. A. 7); *Home Beneficial Life Ins. Co.* v. *National Labor Relations Board*, 159 F. 2d 280, 284–285 (C. A. 4), certiorari denied, 332 U. S. 758; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. 2d 167, 176 (C. A. 3); *National Labor Relations Board* v. *Remington Rand*, 94 F. 2d 862, 871 (C. A. 2), certiorari denied, 304 U. S. 576; *Berkshire Knitting Mills* v. *National Labor Relations Board*, 139 F. 2d 134, 140–141 (C. A. 3), certiorari denied, 322 U. S. 747; *National Labor Relations Board* v. *Ohio Calcium Co.*, 133 F. 2d 721, 726 (C. A. 6); *National Labor Relations Board* v. *Clinton Woolen Mfg. Co.*, 141 F. 2d 753, 756 (C. A. 6); *United Aircraft Mfg. Co.*, 1 NLRB 236, 252; *Columbia Pictures Corp.*, 64 NLRB 490, 514–515.

forcing 66 NLRB 930, 931, certiorari denied, 332 U. S. 762, the Court of Appeals for the Sixth Circuit held that a Michigan statute (predecessor to the State statute here involved), which outlawed strikes unless preceded by service of a notice and observance of a waiting period, could not constitutionally be applied to employees subject to the National Act. In that case the employer discharged employees for leading a strike where no notice had been given as required by the State Act. The employer contended that since the strike was in violation of the State Act it was not protected by Section 7 of the National Act, and that the discharge of the strikers therefore did not violate Sections 8 (1) and (3) of the National Act. The court rejected the contention that State law could in this fashion restrict the scope of protection accorded by Section 7. It pointed out that "The Federal Act does not require the giving of notice of a pending dispute followed by a cooling off period" as a condition precedent to strikes, and concluded, citing *Hill* v. *Florida*, 325 U. S. 538, that State imposition of such conditions unconstitutionally "impairs, qualifies [and] subtracts from" rights guaranteed by the National Act (160 F. 2d at 471).

Section 13 of the amended Act cannot be construed as authorizing imposition by the States of such limitations upon strikes in interstate industries. As it appeared in the original Act, Section 13 provided merely that "Nothing in this Act shall

be construed so as to interfere with or impede or diminish in any way the right to strike." The section was designed to insure that the provision in the Act for an administrative method of settling unfair labor practices would not be held by negative implication to preclude employees from striking to secure similar relief (*supra*, pp. 36–37).[19] The addition in Section 13 of the amended Act of the phrase "or to affect the limitations or qualifications on that right," was likewise inserted only to foreclose implications that since only certain types of strikes were in terms made unlawful by the amended Act, other types of strikes which Section 7 had theretofore been held not to protect, would now come within the protection of the statute. S. Rep. No. 105 on S. 1126, p. 28; H. Conf. Rep. No. 510, on H. R. 3020, p. 59. Unlike Section 14, Section 13 does not deal at all with the relation of State power to Federal regulation in the field covered by the Act; it announces a rule of construction to be followed in applying the Federal Act itself, *U. A. W.* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 259.

Judicial construction of the Wagner Act had made it clear that strikes in aid of lawful collective bargaining demands were within the field of collective bargaining covered by the Federal Act, and that the right to engage in such strikes was affirmatively recognized by Section 7 (*supra*, pp.

[19] Cf. *Bayonne Textile Corp.* v. *American Federation of Silk Workers*, *supra*; testimony of Robert L. Hale on S. 2926, reprinted in *Legislative History*, *op. cit.*, *supra*, note 15, p. 83.

14–16, 37–38). Reenactment of Section 7 in the Act as amended without material change must therefore be taken as indicating Congressional approval of that construction.

(c) The prohibitions and sanctions of the Michigan Act are incompatible with the intention of Congress to permit strikes in support of legitimate collective bargaining demands, when the conditions of the Federal Act are satisfied

The prohibitions of the Michigan Act are inconsistent with the recognition which the Federal Act accords to strikes in support of legitimate collective bargaining demands. In the instant case, if the Michigan Act may validly be applied to the employees of the Company, their conduct in striking, though protected by Sections 7 and 2 (3) of the National Act, is made illegal. The obligation to refrain from striking imposed by State law cannot be reconciled with the freedom to strike recognized in the Federal law.

Moreover, whenever employers and unions meet at the bargaining table in Michigan their relative bargaining power would be put in a different balance should the Michigan Act be applicable.[20] If the Act is inapplicable the employer knows the union has a legal right to strike once Section 8 (d) has been complied with. If the Act is applicable, the employer can gamble on the in-

[20] The Senate Committee Report on the Bill which became the Taft-Hartley Act shows that Congress was concerned with maintaining "the balance of power in collective bargaining negotiations." S. Rep. No. 105, on S. 1126, p. 14.

ability of the union to win a strike vote and thus postpone genuine bargaining until after the strike vote is taken. The Michigan Act thus alters the balance of power between employers and employees upon which the Federal Act depends.

Although the sanctions of the National Act are directed against employers and unions, the language of Section 7, and the purpose of the statute as a whole, establish that the rights enumerated in Section 7 are no more to be impaired or restricted by the States than by employers and unions. This Court considered this problem under the Wagner Act and held unconstitutional a statute by which the State restricted or punished the exercise of rights protected by the National Act. *Hill* v. *Florida,* 325 U. S. 538. Mr. Chief Justice Stone in his concurring opinion stated that the rights enumerated in Section 7 were conferred "generally on employees and not merely as against the employer." 325 U. S., at 545. Cf. *Allen Bradley Local* v. *Wisconsin Employment Relations Board,* 315 U. S. 740. If the employer had attempted to interfere with the strike by conducting a strike vote himself his conduct would be held unlawful interference with rights guaranteed employees by the Act. *Remington Rand* case, *supra.* The strike vote is no less interference with federal rights when conducted by the State.

Further, if the Michigan Act may validly be

applied to the employees of the Company their conduct in striking subjected them to either a fine of not more than $1,000 or imprisonment in the county jail for not more than six months or to both such fine and imprisonment. Section 22. But discharge by an employer on account of striking results in an order of the National Board requiring reinstatement of the employees with back pay (see pp. 14–15, *supra*). If at the time the National Board ordered reinstatement the employees were in a county jail under a sentence of six months' imprisonment, the Federal remedy of reinstatement would to that extent be defeated. Compare *Hill* v. *Florida,* 325 U. S. 538, 543.

Application to the employees of the more rigorous sanctions of the State Act (compare Section 22 of the State Act with Sections 8 (d), 8 (b) (3) and 10 (a) of the National Act) would also conflict with the National policy. If the employees had struck without observing the notice and waiting periods provided in the National Act, such conduct would be an unfair labor practice remediable by the National Board, and the strikers would lose their status as employees unless reinstated by the employer. Under the State Act, as indicated above, the strike could be enjoined at the suit of the employer and the employees could be subjected to criminal penalties. In view of the care exercised by Congress

in selecting the remedies it deemed appropriate to cope with unfair labor practices, and particularly its refusal to permit private parties to obtain injunctive relief (see *Bakery Drivers Union* v. *Wagshal*, 333 U. S. 437, 442, see also p. 28, note 8, *supra*), it is not to be presumed that Congress intended to leave the States free either to accord private parties injunctive relief or to impose different and heavier penalties.[21] *Amazon Cotton Mills Co.* v. *Textile Workers Union*, 167 F. 2d 183, 186 (C. A. 4); *Gerry of California* v. *Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689. Cf. *Jerome* v. *United States*, 318 U. S. 101, 105; *Southern Ry. Co.* v. *R. R. Comm. of Indiana*, 236 U. S. 439, 466; *Missouri Pacific R. Co.* v. *Porter*, 273 U. S. 341, 346.

2. *The Michigan statute regulates a subject matter which Congress has fully regulated in the National Act to the exclusion of State authority*

We believe that the foregoing establishes that the provisions of the Michigan Act as applicable to the instant case are in direct conflict with the National Act. However, even if there is no direct conflict between the two statutes, the Michigan Act operates in the field of collective bargaining which has been regulated by Congress. The extent and nature of that regulation by Congress,

[21] The affirmative rejection of stronger sanctions by Congress, as well as the many affirmative indications that Congress here intended to preempt the field, distinguishes this situation from *California* v. *Zook*, 336 U. S. 725.

as well as its legislative history, show that Congress intended to exclude the application to industries subject to the National Act of such State regulations as the Michigan Act imposes. Thus, in defining the collective bargaining obligation imposed by the National Act on employers and unions, Congress included not only the details of negotiations but also the timing and other conditions precedent to strikes in support of bargaining demands. The Act requires that notices of intent to change existing contractual relations be served, that "proper" periods for mediation be observed without strike or lockout, and deliberately preserves the freedom to strike and the status of strikers when there is compliance with these detained prerequisites (pp. 11–17, 26–41, *supra*).

The Wagner Act imposed the duty to bargain collectively only upon employers, and not upon labor organizations. The Act contained no notice or waiting period limitations or conditions upon strikes in interstate industries. It might conceivably have been argued, therefore, that restrictions such as those contained in the Michigan law did not operate in the field dealt with by Congress in the Wagner Act. But cf. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), certiorari denied, 332 U. S. 762, see also, pp. 33–39, *supra*. In the amended Act Congress extended the obligation to bargain collectively to labor organizations, and imposed

notice, waiting period and election requirements to the full extent it deemed them desirable and appropriate, *supra*, pp. 22–26. It refused, however, to incorporate in its definition of collective bargaining strike vote obligations in substance the same as those contained in the Michigan Act (*supra*, p. 26–32). Congress' mandatory requirement of the strike vote in emergency situations, and permissive use of votes on the employer's last offer in other situations (*supra*, pp. 31–32), demonstrates that Congress regarded the strike vote technique as within the field of collective bargaining regulated by the National Act, and that where it rejected the compulsory strike vote technique it did so because it deemed the requirement inconsistent with Federal policy.

This Court has repeatedly noted that the language and legislative history of the Wagner Act indicated that Congress intended to exclude State regulation from the field of collective bargaining regulated by the Act. *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *La Crosse Tel. Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953; *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; *Hill* v. *Florida*, 325 U. S. 538, 543–544; *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301. In *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 236, this Court pointed to the

Wagner Act as an instance in which Congress acted "so unequivocally as to make it clear that it intends no regulation except its own."

In enacting the amended Act Congress continued in effect, with stated exceptions, its policy of excluding State regulations from the field of collective bargaining regulated by the National Act. Because Congress realized that "by the Labor Act Congress preempts the field that the Act covers insofar as commerce within the meaning of the Act is concerned" (H. Rep. No. 245, on H. R. 3020, p. 44), it took care to preserve to the States in so many words whatever jurisdiction it desired to permit them to retain. Section 10 (a) as amended, authorizes the States to exercise jurisdiction over cases to which the National Act applies only where "cessation of jurisdiction" has taken place; and the State law is consistent with the Federal Act. *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board,* 336 U. S. 301, 313; *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board,* 338 U. S. 953, and even this is permissible only where local industries are affected. Congress left to the states jurisdiction to impose more rigorous restrictions upon union security contracts only after extensive debate, and over objection that lack of uniformity was undesirable. 93 Cong. Rec. 6456, 6519–6520, 6532–6533. To accomplish this purpose Congress enacted Section 14 (b) which expressly reserves to the States power to prohibit the execution or

application of agreements requiring membership in a labor organization as a condition of employment. See *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301. The House Committee explained (H. Rep. No. 245, on H. R. 3020, 80th Cong., 1st Sess., p. 40), that such a "special provision" was necessary "to give to the States a concurrent jurisdiction in respect of closed shop and other union security arrangements."

Similarly, Congress, not desiring to withdraw from the States power to offer mediation and conciliation services in labor disputes affecting commerce, manifested this intention by explicitly naming such agencies in the statute and providing for cooperation between Federal conciliation agencies and those of the States. See Section 202 (c), 203 (b) and Section 8 (d) (3).[22]

[22] Congress was advised that the effect of requiring dispute notices to be filed only with the Federal Conciliator would be to exclude State conciliation services entirely from the field (Hearings before the Senate Committee on Education and Labor, 80th Cong., 1st Sess., p. 563). To avoid this result, and permit State agencies to mediate disputes "which would have only a minor effect on commerce" Congress specifically provided that notices were to be served on both Federal and State agencies; that the Director of the Federal Mediation and Conciliation Service "may establish suitable procedures for cooperation with State and local mediation agencies"; and further provided that the Federal authorities "are directed to avoid attempting to mediate disputes which have only a minor effect on commerce if State or other conciliation services are available to the parties.

A suggestion to preserve the constitutionality of State laws (in addition to those dealing with union security contracts) which operated in the field regulated by the Federal Act (93 Cong. Rec. 3559) was peremptorily abandoned when Congressman Case of South Dakota pointed out (*ibid.*) that if it were adopted "You might nullify much of the bill, because you would establish State rights to deal with all phases of industrial relations in spite of any provisions whatsoever in the Act." If Congress had desired either to repudiate the prior construction of the Wagner Act by removing strikes in aid of lawful collective bargaining demands from the field preempted by the National Act, or to exclude strike vote and waiting period provisions from the expanded field preempted by the Taft-Hartley Act (Cf. Section 13 of H. R. 3020, as it passed the House) it would have said so.

In sum, the provisions of the Michigan law here in issue operate in the field of collective bargaining, a field concerning which Congress, both in the initial Act and in the amended Act, expressed the conviction that uniformity of regulation was imperative (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 9; H. Rep. No. 245, 80th Cong., 1st Sess., p. 40). In this field Congress left no room for imposition by the States of similar or additional regulations. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board,* 338 U. S. 953; *Bethlehem Steel Co.* v. *New York State Labor Relations Board,* 330 U. S. 767, 775–776; *Rice* v.

Santa Fe Elevator Corp., 331 U. S. 218, 236; *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301, 306, 313.

To the extent that the function of the State Act, as applied to disputes such as this one which involve modification of collective agreements, is to afford the State mediation board an opportunity to mediate the dispute, that function is completely performed by Section 8 (d) of the National Act, which provides what Congress considered a "proper" opportunity for mediation. If a strike had been called without giving the notice required by 8 (d), including the thirty day notice to the Michigan State Mediation Board, or without observing the waiting period therein prescribed, the Union would have been guilty of an unfair labor practice under Section 8 (b) (3) of the National Act, and the strikers would have lost their status as employees unless reinstated by their employer (Section 8 (d)). A State could not duplicate the National Act by making such conduct also an offense under State law, nor could it authorize a State agency to duplicate the work of the National Board in remedying the infraction. *Plankinton Packing* case, *supra*.

To the extent that the provisions of the State Act apply notice and waiting period requirements to all disputes, and prohibit all strikes absent affirmative vote of a majority of the employees in a State conducted poll, the requirements go

further than Congress saw fit to go. But where, as here, "Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." *Charleston & W. C. R. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604. Certainly that is true in this case, where, to the extent that the Michigan restrictions exceed those of the National Act, they are precisely those which Congress rejected in formulating Federal policy in this field, and their enforcement, therefore, would override the deliberate judgment of Congress.

C. STATE DETERMINATION OF UNITS FOR STRIKE VOTES IS INCONSISTENT WITH THE DETERMINATION OF UNITS BY THE NATIONAL BOARD

State by State administration of waiting period and strike vote provisions such as those contained in the Michigan law, which enjoin strikes absent authorization by a majority of the employees in a State-defined bargaining unit, is demonstrably inconsistent with the scheme of collective bargaining in Nation-wide industries provided by the Federal Act. The National Act (Section 9 (b)) authorizes the National Board to find appropriate bargaining units of employees which will "insure to employees the full benefit of their right to self-organization and to collective bargaining." The unit finding fixes the size of the group which may

strike in support of bargaining demands. If the group is too small, employees may be left without that equality of bargaining power with the employer which it was the intent of Congress to promote. If the group is improperly defined competition between employees in the group and employees outside the group may prevent stabilization of wages, hours and working conditions within the appropriate area and again jeopardize the balance of bargaining power. The Federal Act is premised on the assumption that all employees in a bargaining unit are free to act together as a single entity in collective bargaining and related activities, including strikes, to obtain improved wages, hours and working conditions.[23] As indicated above, the Congress which enacted the amended Act believed that the right of employees to strike for such lawful objectives was an indispensable concomitant of the system of free collective bargaining.

The National Board has often found it desirable, in order to insure employees the full benefit of their right to bargain collectively, to find appropriate a single unit consisting of virtually all employees of an employer who operates many plants. In such cases, the Board's unit finding reflects its conviction that the equalization

[23] See Hiram S. Hall, *Impact of the Bargaining Unit on Labor Management Relations*, New York University, Second Annual Conference on Labor (1949), pp. 29–48.

of bargaining power contemplated by the statute may best be accomplished if all of the employees are free to act together in collective bargaining, and are free to strike at the same time and in support of the same demands.

The Board made such a determination with respect to the parties involved in the instant case. By decision and certification of the National Board the Union represents in a single bargaining unit employees of the Chrysler Corporation employed in plants located in the States of Indiana and California as well as the State of Michigan. *Chrysler Corp.*, 42 NLRB 1145 (R. 17, 81, 108). The successive collective bargaining agreements between the Union and the Chrysler Corporation apply to all employees in this bargaining unit (*ibid.*). The scheme of the National Act thus contemplates that all of the employees in the bargaining unit, whether employed in Michigan or elsewhere, shall be free to act together and simultaneously in support of legitimate collective bargaining demands.

The waiting period limitations of the Michigan law apply, however, only to a portion of the bargaining unit which has been found appropriate by the National Board. To the extent that waiting period limitations are imposed upon employees in the Company's Michigan plants which are not imposed upon employees in the company's Indiana and California plants, the Michigan Act

fragmentizes the bargaining unit and, by preventing the employees in the bargaining unit from taking uniform action in support of lawful collective bargaining demands, impairs Federal policy.

In addition, if Michigan is free to impose notice and waiting period requirements which must be observed by employees in the bargaining unit who are employed in the State of Michigan, Indiana and California must likewise be free to impose different and varying notice and waiting period requirements upon employees in these States. The consequence would be to impose upon employees of a single employer engaged in nation-wide operations the necessity of complying with diverse and conflicting State requirements before they would be free to act as a unit in collective bargaining with their employers. That such a result is inconsistent with the provisions of the National Act empowering the National Board to group in one unit all the employees of one employer, although scattered in many States, requires no elaboration.

State by State administration of a majority strike vote provision is likewise incompatible with Federal policy. Even assuming, *arguendo,* as the court below apparently believed (see 38 N. W. 2d 421, 425–426), that as a concomitant of its provision for majority rule (Sections 9 (a) and 8 (a) (5)), the National Act sanctions only those strikes which are approved by a majority of the

employees in the appropriate bargaining unit,[24] effectuation of this policy would require determination of the desires of a majority of the employees *in the bargaining unit found to be appropriate by the National Board.* Where, as in this case, the Board has found appropriate a bargaining unit extending beyond the boundaries of a single State, it is beyond the power of any State to make such a determination. Thus, the elections provided for by the Michigan law are limited by the statute to employees in a bargaining unit defined by the State Board, and this unit can be no broader than the State itself.

Administration of the Michigan statute could not, where a Nation-wide unit is involved, comport even with the hypothetical policy of the National Act as to minority strikes. Normally,

[24] The assumption is unwarranted. See pp. 15–17, 27–30, *supra.* It has never been doubted that until an exclusive bargaining agent has been selected a minority of the employees in any unit which the Board might deem appropriate for collective bargaining are protected by Section 7 when they engage in strikes for organizational purposes or to secure redress of grievances. Moreover, the Board and the courts of appeals have held that even after an exclusive representative has been selected, strikes in support of legitimate demands are protected by the Act although only a minority in the unit participate. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (C. A. 6), certiorari denied, 332 U. S. 762; *National Labor Relations Board* v. *Draper Corp.*, 145 F. 2d 199, 205 (C. A. 4). To the extent that the Michigan Act pronibits minority strikes under these circumstances it is in conflict with the Federal Act.

of course, the vote of employees in only one fragment of a bargaining unit cannot establish whether or not a majority of the employees in the unit as a whole favor a strike. Nevertheless, if a majority of the employees in one State should vote against a strike, all of the employees in the State would be bound thereby, despite the fact that, viewing the unit as a whole, a clear majority of the employees favor the strike.

Section 9e of the Michigan Act, which authorizes the State Board to define units in which strike votes shall be conducted, in terms provides that for this purpose the State Board "shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining." This provision is crucial to the State Board's administration of the majority strike vote provisions of the law. In view of the scheme of the Federal Act, and the serious potentials of conflict which would otherwise result, this Court has twice held that the function of determining bargaining units which will best secure to employees their right to collective bargaining, is, so far as industries subject to the National Act are concerned, exclusively the province of the National Board, and one which State agencies may not perform. *Bethlehem Steel Corp.* v. *New York State Labor Relations Board*, 330 U. S. 767; *La Crosse Tel. Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18. Attempted performance of that function by Michigan authorities

in such a case as this, where the bargaining unit which might be deemed appropriate by the State Board must necessarily differ from that found appropriate by the National Board, creates actual conflict and is *a fortiori,* precluded by these decisions.

D. THIS CASE IS NOT CONTROLLED BY *U. A. W.* v. *WISCONSIN EMPLOYMENT RELATIONS BOARD,* 336 U. S. 245

In the *U. A. W.* case, decided last term, this Court held, as we read the opinion, that the States were free to enjoin the intermittent or recurrent work stoppages there involved because in the Court's view Congress had not outlawed or authorized the Board "to prohibit or to supervise the activity * * * nor to entertain any proceeding concerning it" (336 U. S. 245, 263). In the *U. A. W.* case there was no evidence that Congress had considered the question whether the "coercive tactics" utilized in that case should or should not be enjoined by Federal law, and, in the Court's view, the National Board was powerless to condemn such practices "because it is the objectives only and not the tactics of a strike which bring it within the power of the Federal Board" (336 U. S. 245, 263).

As we have shown, however, *supra,* pp. 26–32, the Congress did consider whether the specific type of conduct which Michigan here seeks to punish should be outlawed by the Federal Act. Moreover, the calling of a strike without notice

and observance of a waiting period, where, as in this case, the dispute arises over modification of an existing agreement, conduct which the Michigan Act seeks to reach, is an offense under Federal law, and is remediable by the National Board. Unlike the conduct involved in the *U. A. W.* case, it cannot be said that the conduct here involved is removed from the field regulated by the National Act.

In the *U. A. W.* case, 336 U. S. 245, 264–265, this Court further held that "recurrent or intermittent unannounced stoppage of work to win unstated ends was * * * [not] legalized and approved" by the National Act. The Court pointed out that the affirmative protection accorded by Section 7 of the National Act to "concerted activities for the purpose of collective bargaining" does not extend to "every type of concerted activity" (336 U. S., at p. 257), or to "every kind of strike" (336 U. S., at p. 260). In determining whether the States were empowered to enjoin the particular union conduct involved in that case the Court looked to relevant Board and Court decisions construing Section 7 of the National Act (336 U. S., at pp. 255–257). It concluded that the State prohibition could stand because neither the "bare language" of Section 7, nor "the settled interpretation of the Act by the Board," nor applicable decisions of the Supreme Court and of various Courts of

Appeals "immunize the conduct forbidden by the judgment below" (336 U. S., at pp. 255, 257).

We do not believe the Court decided in that case that Sections 7 and 13 of the National Act contained no protection for any type of strike or work stoppage in aid of legitimate collective bargaining demands, and that the States are free to enjoin strikes or work stoppages which are thus protected. On the contrary, the language of the opinion, which denies to Section 7 the effect of protecting "every type of concerted activity," "every kind of strike," or "all concerted activities" (336 U. S., at p. 257, 260, italics supplied), implies recognition that some forms of strikes and work stoppages in aid of collective bargaining are affirmatively protected by Section 7 against State interference. Resort to Board and court decisions which distinguish between types of strikes and other concerted activities which are protected by Section 7 from those which are not would have been superfluous if the Court meant to hold that Section 7 did not have the effect of precluding State interference with the exercise by employees of the right to engage, at least, in traditional forms of concerted activity in aid of lawful collective bargaining demands.

As we have shown above, Congress has regarded Federal recognition of the right to engage in such conduct as basic to the system of free collective bargaining which it is National policy

to protect and foster (*supra*, pp. 22–41). Consequently, it cannot be said that the *U. A. W.* case authorizes State interference with the concerted activities here involved.

CONCLUSION

For the foregoing reason, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted.

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MARCH 1950.

APPENDIX

The relevant provisions of the National Labor Relations Act, 1935 (49 Stat. 449, 29 U. S. C. 151, *et seq.*), are as follows:

* * * * *

SEC. 2. * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

* * * * *

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141, *et seq.*), are as follows:

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 2. When used in this Act—

* * * * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise,

and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer herein defined.

* * * * *

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

"SEC. 3 * * *

* * * * *

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board

shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members), and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

* * * * *

"SEC. 7. Employees shall have the right to self-organization; to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor ~~organization as a condition of employment~~ authorized in section 8 (a) (3).

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States,

shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

"(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its ow rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) To refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

* * * * *

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not

compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications:

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later;

"The duties imposed upon employers, employees, and labor organizations by para-

graphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer

unit, craft unit, plant unit, or subdivision thereof: * * *

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"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

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"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of

any law, either national or local, relating to collective bargaining.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

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SEC. 202. * * *

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(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

* * * * *

SEC. 203. * * *

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other

conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

* * * * *

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any

recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

* * * * *

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

* * * * *

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of in-

quiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the Board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

* * * * *

The relevant provisions of the Bonine-Tripp Act (Act No. 176 of the Public Acts of 1939, as amended by Act No. 318 of the Public Acts of

1947, Michigan Stat. Ann. 1947 Cumm. Supp. Sec. 17.454 (1), *et seq.*, Comp. Laws 1948, Sec. 423.1, *et seq.*) are as follows:

* * * * *

SEC. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this act.

1. In the event the parties thereto are unable to settle any dispute, the employees or their representative, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice upon the board of such dispute together with a statement of the issues involved. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to the employer at his regular address not less than 10 days before the strike or lockout is to become effective, or in case of an industry affected with a public interest or a public utility or hospital, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate

in the negotiations to mediate any dispute in an industry affected with a public interest including any public utility or hospital.

SEC. 9a. In the event that it becomes apparent to the board that there is no reasonable probability of settlement of such dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of any impending strike, an election upon such issue which election shall be conducted and supervised by the board. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that in the opinion of such party, further efforts to settle such dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practical to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice: *Provided,* That such board need not call more than 1 election involving the issues set forth in the notice served upon the board. The expense of such election shall be defrayed by the parties to such dispute either equally or upon such other basis as may be agreed upon. Every employee in the bargaining unit shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed. The board shall have the power and authority to promul-

gate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

SEC. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

* * * * *

SEC. 9e. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: *Provided, however,* That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit.

* * * * *

SEC. 22. Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, or who shall cause or call a lockout, without first having served notice as required in section 9 of this act, or while mediation is pending as provided in section 9c of this

act, or while an election is pending under said section 9, or while arbitration proceedings are pending under sections 9d and 13 of this act, or any person who shall engage in unauthorized picketing as prohibited by this act, or who shall knowingly and wilfully violate any of the rules or regulations promulgated under section 9a and section 9c, or any of the provisions of section 9f, shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

SEC. 22a. The board, or any person, labor organization, firm or corporation may pursue any proper legal or equitable remedy or relief in any court of competent jurisdiction for any act or conduct in violation of any of the provisions of this act.

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